

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

CHRISTOPHER D. AMMONS, :
Plaintiff, : Case No. 3:15cv00387
vs. :
District Judge Thomas M. Rose
NANCY A. BERRYHILL, : Magistrate Judge Sharon L. Ovington
Commissioner of the Social
Security Administration, :
Defendant. :

DECISION AND ENTRY

This case is before the Court upon the Motion For Authorization Of Attorney Fees Pursuant to 42 U.S.C. § 406(b) filed by Plaintiff's attorney (Doc. #19) and the Commissioner's response (Doc. #20). The Commissioner does not oppose Plaintiff's counsel's Motion. (Doc. #20, *PageID* #498).

The Motion seeks an award of attorney fees under 42 U.S.C. § 406(b)(1) in the total amount of \$6,136.00. In the absence of opposition by the Commissioner, the Motion and supporting Exhibits establish that an award of attorney fees is reasonable and warranted under 42 U.S.C. § 406(b)(1) in the amount the Motion seeks.

In addition, the Court previously accepted the parties' stipulation to an award of \$2,747.50 in attorney fees (and costs) to Plaintiff's counsel under the Equal Access to Justice Act (EAJA). (Doc. #19). The EAJA award, however, was subject to offset in the

amount of any debt Plaintiff owed the Government. *See* Doc. #17. The current record does not indicate whether or not Plaintiff's counsel actually received any of the EAJA award because of the potential offset. Plaintiff's counsel acknowledges that he may not recover attorney fees under both the EAJA and 42 U.S.C. § 406(b) for the same work. (Doc. #19, *PageID* #469). Plaintiff's counsel must therefore return to Plaintiff the amount of EAJA fees, if any, he has actually received. *See Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002).

Accordingly, the Court hereby **ORDERS** that:

1. The Motion For Authorization Of Attorney Fees Pursuant to 42 U.S.C. § 406(b) filed by Plaintiff's attorney (Doc. #19) is GRANTED;
2. The Commissioner shall pay Plaintiff's attorney fees pursuant to 42 U.S.C. § 406(b)(1) in the amount of \$6,136.00;
3. Plaintiff's counsel shall refund to Plaintiff the amount of attorney fees, if any, he has actually received under the Equal Access To Justice Act (Doc. #17); and
4. The case remains terminated on the docket of this Court.

September 12, 2017

*s/Thomas M. Rose

Thomas M. Rose
United States District Judge